P

Permits

SEE: Regulatory agencies and permits.

Piers and wharfs

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(6) Multiple use of existing pier and wharf facilities will be encouraged, to reduce the need for adding new facilities.

WAC 332-30-142: Piers.

(1) Piers within harbor areas will be authorized as needed to serve the needs of commerce and navigation but may not extend beyond the outer harbor line.
(2) No piers or other fixed structures are permitted within waterways established under RCW 79.01.428.
(3) Multiple use of pier and wharf facilities will be encouraged, rather than the addition of new facilities.
(4) Piers on first class tidelands and shorelands will be permitted as needed for commercial and residential purposes without any restriction as to frequency; however, the length will be restricted as needed so as not to unduly interfere with navigation. The type of structure may be restricted so as to minimize impact on environment and other users.
(5) Public and common use residential piers may be considered on public use - general beaches so designated on selected second class tideland and shoreland tracts.
(6) No piers or structures of any kind are permitted on public use - wilderness beaches so designated on selected second class tideland and shoreland tracts.

(7) Piers may be approved for installation on second class tideland and shoreland tracts not designated as public use beaches. They must follow the pier spacing and length standards.
(8) Pier spacing and length standards:
  (a) New piers intended for resort and recreational use on second class tidelands and shorelands extending beyond the line of extreme low tide or line of navigability may be authorized if more than five times the pier length from any other pier on either side.
  (b) Leases covering such installations may require that the owner of the pier allow the adjacent shoreline owners to utilize the pier for loading and unloading purposes.
  (c) Unauthorized existing piers will be considered as new piers and offered leases which may provide for joint use.
  (d) New piers should not extend seaward further than immediately adjacent similar structures except in harbor areas where harbor lines control pier lengths.
(9) Pier design criteria:
  (a) Floating piers minimize visual impact and should be used where scenic values are high. However, floating piers constitute an absolute impediment to boat traffic or shoreline trolling and should not be used in areas where such activities are important and occur within the area of the proposed pier. Floating piers provide excellent protection for swimmers from high-speed small craft and may be desirable for such protection. Floating piers interrupt littoral drift and tend to starve down current beaches. This effect should be considered before approval.
  (b) Pile piers have a greater visual impact than do floating piers, and their use should be minimized in areas where scenic values are high. Pile piers cause less interference with littoral drift and do provide a diverse habitat for marine life. In areas where near-shore trolling is important, pile piers should be used with bents spaced 16 feet apart and with a minimum of 5 feet clearance above extreme high tide. Single pile bents are preferred where possible.

Discussion on piers and wharfs

Piers and wharfs must receive authorization from the department before being installed on state-owned aquatic

lands. Piers and wharfs are generally part of a water-dependent use. However, if nonwater-dependent activities are taking place on or are proposed for a pier or wharf, that use must meet the standards for authorizing nonwater-dependent uses and the lessee must pay rent appropriate to nonwater-dependent uses for that area of the pier or wharf. SEE ALSO: Use authorizations; Water-dependent uses.

Navigation is a major concern with piers and wharfs. The builder of a pier or wharf must not infringe on navigation in the middle of the waterbody nor for vessels approaching neighboring piers and wharfs. SEE ALSO: Navigation.

Private recreational docks do not require authorization from the department as long as they meet certain conditions. SEE ALSO: Recreational docks, private.

Pipelines

SEE: Linear projects; Utility lines.

Pollution laws

Discussion on pollution laws

Many activities have resulted in the release of toxic chemicals and other pollutants that accumulate in aquatic sediments and may pose a threat to human health and the environment. The public owns the bedlands at the deepest part of bays and rivers, so these pollutants usually end up on state-owned aquatic lands. Public concern over toxic chemicals in the environment led to the passage of several federal and state laws that regulate the discharge and cleanup of pollution. SEE ALSO: Environmental protection.

POLLUTION LAWS: ADDRESSING POLLUTION CONCERNS

Discussion on pollution laws: addressing pollution concerns

Many uses of state-owned aquatic lands over the past 100-plus years have caused pollution and contamination. It is also possible for activities on privately-owned aquatic lands or uplands to cause contamination that eventually winds up on state-owned aquatic lands. It is critical that department staff stay apprised of activities and proposed actions which may result in new releases of contamination to state-owned aquatic lands or change the ownership or liabilities for clean-up of the contamination. Staff should keep this in mind especially with regard to:

- Shipyards
- Marinas
- Outfalls
- Industrial facilities
- Waste water treatment facilities
- Storm water discharges

It is critical to address pollution concerns both at the beginning and end of a lease. SEE ALSO: Use authorizations.

If there is reason to suspect contamination of sediments on state-owned aquatic lands proposed to be leased or where the lease will shortly expire, the department should require the applicant or lessee to sample for contamination according to Ecology's MTCA sediment quality standards. If sampling shows violations of these standards, it may trigger various requirements under MTCA. One "hot" sample does not trigger MTCA, but may be reason to conduct further sampling to identify the extent of contamination. The department must attend to these issues, especially when

finalizing a lease, to identify whether there is contamination for which the lessee should be held responsible.

Even if a project would not cause pollution itself, but is proposed to occur in a contaminated area, the project should be carefully reviewed for its potential to affect the state's liability.

The Department of Ecology has the authority to require the department to take action to clean up contamination under MTCA when the sediment quality standards are exceeded. As the proprietary land manager, the department can require similar action from a lessee if provided for in the lease, even if MTCA is not triggered.

In recent years, the department and the Department of Ecology have developed a memorandum of agreement concerning contaminated sediment source control, cleanup and disposal. A key purpose of the agreement is to ensure the effective integration of the state's regulatory and proprietary authorities for the prevention, investigation, and cleanup of contaminated sediment sites. The agreement is designed to establish clear and simple procedures to ensure continued communication and close cooperation between Ecology and the department during implementation.

Under the agreement with Ecology, the department should be notified when discharge authorizations, rule development, and other actions Ecology may undertake could affect state-owned aquatic lands. Land managers should know the regional Ecology staff person responsible for implementing the agreement.

If staff have reason to suspect the potential for significant and imminent hazardous discharges on or near state-owned aquatic lands, they should contact the appropriate Ecology staff. Also, staff should make a site visit, with the Ecology staff if possible, and investigate concerns related to habitat quality, water quality and sediment contamination. SEE ALSO: Regulatory agencies and permits.

POLLUTION LAWS: CLEANUP OF POLLUTANTS

Discussion on pollution laws: cleanup of pollution

Many laws apply to contamination of sediments on state-owned aquatic lands. The most important to the department are CERCLA and MTCA. SEE ALSO: Sediments.

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) in 1994, is a complex federal statute aimed at cleaning up contaminated sites. Regarding state-owned aquatic lands, this can include tidelands, shorelands, and bedlands where hazardous substances have been deposited, spilled, or otherwise moved by tidal action or water transport. CERCLA requires owners and operators to notify the Environmental Protection Agency (EPA) of any release or threatened release of hazardous substances. The EPA is empowered to investigate any such release or threatened release, to respond immediately to emergency situations and to clean up identified sites. CERCLA also creates a federal fund to pay a portion of certain clean-up costs (hence "Superfund"). Under CERCLA, all parties associated with a contaminated site, including the land users, land owners, and anyone who ever disposed of material there – together known as potentially responsible parties – are each fully liable for cleanup, regardless of fault.

The Model Toxics Control Act (MTCA) is a state law modeled on CERCLA, and gives the Department of Ecology authority similar to the EPA, and additionally includes petroleum in the definition of hazardous substances. This law also imposes liability regardless of fault on all potentially liable parties (basically the same concept as potentially responsible parties).

Under MTCA, Ecology has established sediment quality standards based on numerical criteria for chemical concentration levels. These criteria are based on a complex statistical method, and currently apply only to marine and estuarine waters. At present, there are no sediment management standards for freshwater.

If sampling shows violations of these standards, it may trigger various requirements under MTCA. One "hot" sample does not trigger MTCA, but may be reason to conduct further sampling to identify the extent of contamination. The department must attend to these issues, especially when finalizing a lease, to identify whether there is contamination for which the lessee should be held responsible.

Under these contamination cleanup laws, the state could be held potentially responsible for the entire cleanup of any toxic chemicals found on land it manages, even if it did not cause the pollution. If the company that caused the contamination no longer exists, the cost of the cleanup may have to be shared by all other potentially liable or potentially responsible parties at or surrounding the site under MTCA or CERCLA, respectively. Staff should always seek to address pollution concerns, both to better ensure environmental protections and to avoid liability to the state.

As of June 1999, EPA has taken actions against the department at three Superfund sites. The department and EPA have negotiated a framework agreement that covers six sites. As of 1996, Ecology counted 49 CERCLA and MTCA sites in Puget Sound, not all of which are on state-owned aquatic lands. There are additional sites in Lake Union, the Columbia River, and elsewhere across the state. Ecology has estimated that a typical cleanup on an aquatic land site costs from as little as a few hundred thousand dollars for a small site to tens of millions of dollars for a large site.

The state of Washington, by virtue of owning aquatic lands, has been identified as a potentially responsible party for some contaminated sites on state-owned aquatic lands. The department shares the responsibility for cleanup with others who contributed to the problem and may or may not ultimately be held financially liable. As a state agency, the department is not liable under MTCA. However, as the public steward of state-owned aquatic lands, the department has a vital interest in ensuring they are free of contamination, irrespective of liability.

POLLUTION LAWS: WATER POLLUTION CONTROL

Discussion on pollution laws: water pollution control

The federal Clean Water Act sets up the basic structure to regulate discharges of pollutants to waters of the United States. The Department of Ecology is the state agency which has been delegated the responsibility for administering portions of the Act. Ecology also administers the State Water Pollution Control Act and its permits. Collectively, these laws regulate discharges of pollutants to state waters.

Section 404 of the Clean Water Act is the principal federal regulatory program protecting remaining wetland resources. Under Section 404, the U.S. Army Corps of Engineers administers a permitting program for the discharge of dredged and fill materials into the waters of the United States, including wetlands.

Under Section 401 of the Clean Water Act, a water quality certification is required of any applicant for a federal license or permit to conduct any activity that may result in discharge into surface waters. This includes discharge of dredge and fill material into water or wetlands. This permit is frequently associated with, and ancillary to, Section 404 and Section 10

permits, National Pollution Discharge Elimination System permits, and dredging/disposal permits under Puget Sound Dredge Disposal Analysis, and similar authorities. The Department of Ecology has a checklist for section 401 certification. Staff should request a copy of this checklist for each applicant with potential for significant impacts to state-owned aquatic lands.

Section 303(d) of the Clean Water Act contains a program for cleaning up waters by requiring states to establish waterbody specific limits for pollutants, known as setting the "total maximum daily load" (TMDLs). A TMDL establishes limits on pollutants that can be discharged to the waterbody and still allow state water quality standards to be met. The TMDL program requires states to determine which waters are not meeting water quality standards. The states then prioritize these waters for cleanup, based on the severity of pollution and the intended use of the area.

In these priority waters, the Department of Ecology determines how much pollution the water can handle and still meet water quality standards. This pollution load, or TMDL, is then divided among the polluters that affect the water body. Experiments with pollution trading among cities may result in over-polluting certain stretches of state-owned aquatic lands in rivers. This "trading" may or may not be acceptable to meet the TMDL and protect state-owned aquatic resources. Land managers should ensure that state interests are known and considered in such cases.

Under Section 303(d) of the Clean Water Act, Ecology is required every two years to prepare a list of estuaries, lakes, and streams that fall short of state surface water quality standards, and that are not expected to improve within the next two years. There are no permits associated with the TMDL program.

Ports and Port Management Agreements

RCW 79.90.475: Management of certain aquatic lands by port district--Agreement--Rent--Model management agreement.

Upon request of a port district, the department and port district may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district, for port purposes as provided in Title 53 RCW. Such agreement shall include, but not be limited to, provisions defining the specific area to be managed, the term, conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state Constitution and the policies of this chapter. If a port district acquires operating management, lease, or ownership of real property which abuts state-owned aquatic lands currently under lease from the state to a person other than the port district, the port district shall manage such aquatic lands if:

(1) The port district acquires the leasehold interest in accordance with state law, or

(2) the current lessee and the department agree to termination of the current lease to accommodate management by the port. The administration of aquatic lands covered by a management agreement shall be consistent with the aquatic land policies of chapters 79.90 through 79.96 RCW and the implementing regulations adopted by the department. The administrative procedures for management of the lands shall be those of Title 53 RCW. No rent shall be due the state for the use of state-owned aquatic lands managed under this section for water-dependent or water-oriented uses. If a port district manages state-owned aquatic lands under this section and either leases or otherwise permits any person to use such lands, the rental fee attributable to such aquatic land only shall be comparable to the rent charged lessees for the same or similar uses by the department: PROVIDED, That a port district need not itemize for the lessee any charges for state-owned aquatic lands improved by the port district for use by carriers by water. If a port leases state-owned

aquatic lands to any person for nonwater-dependent use, eighty-five percent of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to the state. Upon application for a management agreement, and so long as the application is pending and being diligently pursued, no rent shall be due the department for the lease by the port district of state-owned aquatic lands included within the application for water-dependent or water-oriented uses. The department and representatives of the port industry shall develop a proposed model management agreement which shall be used as the basis for negotiating the management agreements required by this section. The model management agreement shall be reviewed and approved by the board of natural resources. [1984 c 221 § 6.]

WAC 332-30-103: Purpose and applicability.

(1) This chapter [all aquatic resources WACs] applies to all state-owned aquatic lands. Except when specifically exempted, this chapter applies to aquatic lands covered under management agreements with port districts (WAC 332-30-114).

(2) These regulations do not supersede laws and regulations administered by other governmental agencies covering activities falling under their jurisdiction on these same lands.

(3) These regulations contain performance standards as well as operational procedures to be used in lease management, land use planning and development actions by the department and port districts. These regulations shall apply each to the department and to the port districts, when such districts manage aquatic lands as the result of management agreements, and neither entity shall impose management control over the other under these regulations except as provided for in such management agreements.

WAC 332-30-114: Management agreements with port districts.

By mutual, formal, written agreement the department may authorize a port district to manage some or all of those aquatic lands within the port district meeting the criteria stated in subsection (2) of this section. The port district shall adhere to the aquatic land management laws and policies of the state as specified in chapters 79.90 through 79.96 RCW. Port district management of state aquatic lands shall be consistent with all

department regulations contained in chapter 332-30 WAC. These requirements shall govern the port's management of state aquatic lands. The administrative procedures used to carry out these responsibilities shall be those provided for port districts under Title 53 RCW.

(1) Interpretations. Phrases used in legislation (RCW 79.90.475) providing for management agreements with ports shall have the following interpretation:

(a) "Administrative procedures" means conducting business by the port district and its port commission.

(b) "Aquatic lands abutting or used in conjunction with and contiguous to" means state-owned aquatic lands which share a common or coincident boundary with an upland parcel or in the event the state aquatic land does not attach to an upland parcel (i.e., bedlands, harbor areas, etc.), this term shall include the aquatic land adjacent to and waterward of the port owned or controlled aquatic parcel which has a common or coincident boundary to the upland parcel.

(c) "Diligently pursued" means such steady and earnest effort by the port district and the department which results in the resolution of any deficiencies preventing the issuance of a management agreement to the port.

(d) "Leasehold interest" means the benefits and obligations of both the lessor and lessee resulting from a lease agreement.

(e) "Model management agreement" means a document approved by the board of natural resources to be used for all individual management agreements with port districts.

(f) "Operating management" means the planning, organizing, staffing, coordinating, and controlling for all activities occurring on a property.

(g) "Otherwise managed" means having operating management for a property.

(h) "Revenue attributable" means all rentals, fees, royalties, and/or other payments generated from the use of a parcel; or the most likely amount of money due for the use of a parcel as determined by procedures in chapter 332-30 WAC, whichever is greater.

(2) Criteria for inclusion. State-owned parcels of aquatic lands, including those under lease or which may come under lease to a port, abutting port district uplands may be included in a management agreement if criteria set forth in RCW 79.90.475 are

met and if there is documentation of ownership, a lease in good standing, or agreement for operating management, in the name of the port district for the upland parcel.
(3) A model management agreement and any amendments thereto shall be developed by the department and representatives of the port industry. The board of natural resources shall review and approve the model management agreement and any subsequent amendments.
(4) Processing requests. The following application requirements, review procedures, and time frame for responses involved in the issuance of a management agreement to a port district shall apply.

(a) Application requirements. The following items must be submitted to the department by the port district in order for its request to be an application for a management agreement:

(i) A copy of a resolution of the port commission that directs the port district to seek a management agreement;

(ii) An exhibit showing the location of and a description adequate to allow survey for each parcel of state-owned aquatic land to be included in the agreement, plus sufficient information on abutting port parcels to satisfy the requirements of subsection (2) of this section;

(iii) The name, address, and phone number of the person or persons that should be contacted if the department has any questions about the application.

(b) Time frames for responses:

(i) Within thirty days of receipt of an application, the department shall notify the port district if its application is complete or incomplete;

(ii) Within thirty days of receipt of notification by the department of any incompleteness in their application, the port district shall submit the necessary information;

(iii) Within ninety days of receipt of notification by the department that the application is complete, the port district and department shall take all steps necessary to enter into an agreement.

Discussion on ports and Port Management Agreements

The department and port districts sometimes co-manage state-owned aquatic lands. The contractual vehicle for the management of these lands is the Port Management Agreement (PMA). The Division has primary responsibility for dealing with ports and PMAs, but should receive assistance from the Regions.

A PMA is a written agreement between the department and a port district authorizing the port to manage, on behalf of the state, some or all of the state-owned aquatic lands within the port district. These lands must directly abut or be contiguous with a parcel of property owned, leased, or otherwise controlled by the port district. The PMA grants day-to-day management control and responsibility over these lands to the port. The department still has an underlying interest in and responsibility for managing these aquatic resources, including protecting the environment on these lands, in accordance with its statutory obligations.

There are 76 ports in Washington. As of 1999, 29 have signed PMAs with the state and three have applied for a PMA. Of these, 12 have the 1995 model agreement, 17 are managed under the 1984 model, and three are pending. The major differences between the 1995 agreements and the 1984 agreements are that 1984 agreements do not have a termination date and are unspecific as to liability for environmental damage. Ports also interpret the 1984 agreement as allowing them to unilaterally add certain areas to the agreement.

1995 PMAs

Port of Bellingham
Port of Coupeville
Port of Edmonds
Port of Friday Harbor
Port of Ilwaco
Port of Olympia
Port of Port Townsend
Port of Poulsbo
Port of Seattle
Port of Shelton
Port of Wahkiakum, Dist. #2
Port of Woodland

1995 PMAs pending

Port of Everett

Port of Kalama
Port of Silverdale

1984 PMAs

Port of Allyn	Port Dist. #1, Klickitat County
Port of Anacortes	Port of Longview
Port of Bremerton	Port of Port Angeles
Port of Brownsville	Port of Skagit County
Port of Camas Washougal	Port of Tacoma
Port of Chinook	Port of Vancouver
Port of Clarkston	Port of Whitman County
Port of Grays Harbor	Port of Willapa Harbor
Port of Kingston	

Ports are required to manage state-owned aquatic lands under a PMA "consistent with the aquatic land policies of chapters 79.90 through 79.96 RCW and the implementing regulations [Chapter 332-30 WAC] adopted by the department." A PMA is similar to a lease in many respects. It is, however, more than just a lease in that it serves as a memorandum of understanding between the department and the port. Therefore, oversight of the PMA requires a considerably different role than that of lease manager.

Any new PMA must use the 1995 model Port Management Agreement, unless it is subsequently updated by the Board of Natural Resources. This means using the model agreement in its entirety. Deviations from the model agreement require approval from Executive Management in advance of any commitments.

Once the PMA is in place, the port has the responsibility for negotiating leases in the areas covered by a PMA. However, acting on behalf of the public landowner, the department oversees port and lessee compliance with the conditions of the PMA. To do this, the department can take advantage of joint inspections conducted by regulatory agencies by accompanying those agencies or by requesting copies of their inspection reports and any photographs.

If the port approves a lease for a water-dependent use, the state does not receive any money from that lease. If the lease is for a nonwater-dependent use, however, the port must return to the state 85 percent of the rent attributed to the state-owned aquatic lands. This does not include any rent attributable to improvements and other services performed by the port for the tenant.

PORTS AND PORT MANAGEMENT AGREEMENTS: ROLE OF THE REGIONS

Discussion on ports and port management agreements: role of the Regions

The Division has responsibility for negotiating the PMAs and for overseeing compliance. To assist the Division, Regions should:

- Be familiar with the PMAs in their Region.
- Be familiar with the ownership boundaries of lands within a port district, both those belonging to the state and those which are owned or controlled by the port.
- Know the local port officials and staff.
- Be aware of port activities which may impact adjacent state-owned aquatic lands. For example, when in the area, check for instances of non-compliance by the ports or their lessees and for activities which could lead to contamination of sediments.
- When reviewing applications and permits, determine their location relative to PMA boundaries.
- Notify the Division of any issues or problems.

The department should keep two complete files on PMAs, one for the Region and one for the Division.

Preference rights

SEE: Use authorizations.
For preference rights in harbor areas, SEE: Harbor areas.

Preserves, aquatic

SEE: Reserves, aquatic.

Prospecting

SEE: Mining and prospecting.

Public benefits

RCW 79.90.450: Aquatic lands--Findings.
The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department of natural resources the responsibility to manage these lands for the benefit of the public. The legislature finds that water-dependent industries and activities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are faced with conflicting use demands. The purpose of RCW 79.90.450 through 79.90.545 is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the

department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands.

RCW 79.90.455: Aquatic lands--Management guidelines.
The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by aquatic lands are varied and include:
(1) Encouraging direct public use and access;
(2) Fostering water-dependent uses;
(3) Ensuring environmental protection;
(4) Utilizing renewable resources. Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit.

WAC 332-30-106 Definitions.
(48) "Public benefit" means that all of the citizens of the state may derive a direct benefit from departmental actions in the form of environmental protection; energy and mineral production; utilization of renewable resources; promotion of navigation and commerce by fostering water-dependent uses; and encouraging direct public use and access; and generating revenue in a manner consistent with RCW 79.90.455.
(53) "Public trust" means that certain state-owned tidelands, shorelands and all beds of navigable waters are held in trust by the state for all citizens with each citizen having an equal and undivided interest in the land. The department has the responsibility to manage these lands in the best interest of the general public.

Discussion on public benefits

RCW 79.90.450 is the introduction to the Aquatic Lands Act, passed by the Legislature in 1984. This act sets out the most important guiding principles for managing this “finite natural resource of great value and an irreplaceable public heritage.”

The public benefits described in RCW 79.90.455 are the fundamental basis for decisions regarding state-owned aquatic lands. Each decision must be weighed with these benefits primarily in mind. While not every use of state-owned aquatic lands can always provide all of these benefits, all these benefits should be explicitly considered when deciding on a proposed use of these lands.

In particular, as the natural environment of aquatic lands is its most fragile and difficult-to-replace public benefit and as befits the term “ensure,” the department is dedicated to taking all possible measures within its authority to protect the aquatic environment. Even as the department strives to provide for the other benefits of state-owned aquatic lands, environmental protection must be in the forefront of all department decisions. SEE ALSO: Environmental protection; State-wide value; Multiple-use.

The definitions in WAC 332-30-106 tell us about more than just public benefits and public trusts; they define the customers we serve. The department manages state-owned aquatic lands “for all citizens” collectively, “with each citizen having an equal and undivided interest.” The department must manage these lands not only for those persons who wish to use these lands for individual benefit, but for “the general public” so that “all of the citizens of the state may derive a direct benefit.”

Public lands

RCW 79.01.004: "Public lands," "state lands" defined.
Public lands of the state of Washington are lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tidelands, shorelands and harbor areas as hereinafter defined, and the beds of navigable waters belonging to the state. Whenever used in this chapter the term "state lands" shall mean and include: School lands, that is, lands held in trust for the support of the common

schools; University lands, that is, lands held in trust for university purposes; Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges; Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school; Normal school lands, that is, lands held in trust for state normal schools; Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive and judicial purposes; Institutional lands, that is, lands held in trust for state charitable, educational, penal and reformatory institutions; and All public lands of the state, except tidelands, shorelands, harbor areas and the beds of navigable waters.

Discussion on public lands

The term “public lands” includes state-owned aquatic lands, but the term “state lands,” as used in statute, does not,. This is important with regard to many statutes in Chapter 79.01 RCW regarding public lands in general. SEE ALSO: State-owned aquatic lands.

Public use and access

RCW 79.90.455: Aquatic lands--Management guidelines.
The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by aquatic lands are varied and include:
(1) Encouraging direct public use and access;
(2) Fostering water-dependent uses;
(3) Ensuring environmental protection;
(4) Utilizing renewable resources. Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit.

RCW 79.90.470 Aquatic lands -- Use for public utility lines -- Use for public parks or public recreation purposes -- Lease of tidelands in front of public parks.

The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted without charge by an agreement, permit, or other instrument if the use is consistent with the purposes of RCW 79.90.450 through 79.90.460 and does not obstruct navigation or other public uses. Use for public parks or public recreation purposes shall be granted without charge if the aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire. The department may lease state-owned tidelands that are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after the department has consulted with the state parks and recreation commission.

WAC 332-30-106 Definitions.

(51) "Public place" means tidelands belonging to and held in public trust by the state for the citizens of the state, which are not devoted to or reserved for a particular use by law.
(54) "Public use" means to be made available daily to the general public on a first-come, first-served basis, and may not be leased to private parties on any more than a day use basis.
(55) "Public use beach" means a state-owned beach available for free public use but which may be leased for other compatible uses.

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(19) Bedlands abutting upland parks will be considered for underwater parks.
(22) Motorized vehicular travel shall not be permitted on public use tidelands and shorelands except under limited circumstances such as a boat launch ramp.

WAC 332-30-122: Aquatic land use authorization.

All requirements in this section shall apply to the department. Subsection (2) of this section (except subsection (2)(a)(iii) and (b)(iii) of this section), subsections (3)(a), and (4)(a) shall apply to

port districts managing aquatic lands under a management agreement (WAC 332-30-114).
(2) Application review. In addition to other management considerations, the following special analysis shall be given to specific proposed uses:

(b) Public use and access.

(i) Wherever practical, authorization instruments for use of aquatic lands shall be written to provide for public access to the water.

(ii) Areas allocated for first-come, first-served public use shall not be managed to produce a profit for a concessionaire or other operator without a fee being charged.

(iii) Notice will be served to lessees of tidelands and shorelands allocated for future public use that prior to renewal of current leases, such leases will be modified to permit public use or will be terminated.

WAC 332-30-131: Public use and access.

This section shall not apply to private recreational docks. Subsections (2) and (3) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). Public use and access are aquatic land uses of state- wide value. Public access and recreational use of state-owned aquatic land will be actively promoted and protected.
(1) Access encouraged. Other agencies will be encouraged to provide, in their planning, for adequate public use and access and for protection of public use and access resources.
(2) Access grants. Aquatic Land Enhancement Account funds will be distributed to state and local agencies to encourage provision of public access to state-owned aquatic lands.
(3) Access advertised. State-owned aquatic lands particularly suitable for public use and access will be advertised through appropriate publications.
(4) No-fee access agreements. No-fee agreements may be made with other parties for provision of public use and access to state-owned aquatic lands provided the other party meets the following conditions:

(a) The land must be available daily to the public on a first-come, first-served basis and may not be leased to private parties on any more than a day-use basis.

(b) Availability of free public use must be prominently advertised by appropriate means as required. For example, signs may be required on the premises and/or on a nearby public road if the facility is not visible from the road.
(c) When the use is dependent on the abutting uplands, the managing entity must own, lease or control the abutting uplands.
(d) User fees shall not be charged unless specifically authorized by the department and shall not exceed the direct operating cost of the facility.
(e) Necessary nonwater-dependent accessory uses will be allowed in the no-fee agreement area only under exceptional circumstances when they contribute directly to the public's use and enjoyment of the aquatic lands and comply with WAC 332-30-137. Such nonwater-dependent uses shall be required to pay a fair-market rent for use of aquatic lands.
(f) Auditable records must be maintained and made available to the state.

(5) Rent reduction for access. Leased developments on state-owned aquatic lands which also provide a degree of public use and access may be eligible for a rent reduction. Rental reduction shall apply only to the actual area within the lease that meets public access and use requirements of subsection (4) of this section.

Discussion on public use and access

"Encouraging direct public use and access" is one of the key public benefits of state-owned aquatic lands that the department must strive to provide. SEE ALSO: Public benefits.

Public use and access to aquatic lands for transportation, commerce, and recreation is a basic right of Washington citizens. The department's role is to protect public access and to ensure that opportunities for public access are fully considered in aquatic lands management decisions. If areas are designated for future public use, notice must be served to lessees of tidelands and shorelands in those areas that existing leases must be modified to permit public use or they will not be renewed.

With regard to public use and access, the department has three separate but related goals:

- Preservation of natural values of aquatic resources that can be used, such as clean water for fish and for swimming, and bedlands and beaches that are ecologically healthy.
- Enhancement of access to shorelines so the public can better enjoy these natural values of aquatic resources.
- Maintenance of adequate passage for waterborne commerce and navigation.

PUBLIC USE AND ACCESS: PUBLIC PARKS

Discussion on public use and access: public parks

Public parks, such as those on piers, are especially favored uses of state-owned aquatic lands, as they provide direct public use and access to aquatic lands and also are a water-dependent use. The department will usually approve proposed public parks, so long as they do not cause significant environmental damage or present serious conflicts with other water-dependent uses, such as navigation impacts or safety concerns related to nearby industrial uses.

Use of state-owned aquatic lands are to be granted free of charge for public parks and public recreation purposes. The aquatic lands and improvements on them must be available to the public on a first-come, first-served basis, and may not be managed to produce a profit for the operator or a concessionaire. A public park may be incorporated into

another use, and the park portion will be free of rent, as long as the park is freely available to the public at all times. For example, a tenant might construct a waterfront boardwalk as part of a larger facility, as was done by the Seattle Aquarium. In this case, the tenant would pay no rent for the boardwalk portion of the aquatic land parcel, even if it financially benefits the tenant's business, as long as the boardwalk also serves as a usable and accessible public area.

Public utility lines

SEE: Utility lines.